THE DIVORCE CONGRESS AND SUGGESTED IMPROVEMENTS IN THE STATUTORY LAW RELATING TO DIVORCE.

That there is in these United States a well known, defined, and to thinking minds an exceedingly dangerous divorce evil, that it has long been proclaimed against, and with growing voice, by pulpit and press, and that religious organizations and learned societies have discussed and denounced it, is well known, as it is also to our profession that for more than twenty years the American Bar Association has had under consideration suggestions for its legislative remedy. The evil can be stated in no stronger terms than that it casts its shadow on every community, and that annually there are now granted in the United States more than 70,000 divorces, increasing from 25,535 in 1886, and from 9,937 in 1867, thus greatly exceeding the proportion of growth in our population, while, in comparison with other civilized nations, the cloud grows darker; England making less than 800 such decrees in a single year, while the proportion in Germany, and even in France, is far below the United States. Perhaps the most influential and in terms the strongest denunciation of this national evil was formulated by the Inter-Church Conference of last autumn, but yet, like all else that had been said, and so well said, though nowhere with greater emphasis that in that Conference, nothing practical has heretofore been accomplished providing a means whereby the disease may be cured, save only that public attention has been called to the dangerous situation, and thereby public opinion has been aroused to the necessity of remedial action.

It may well be the boast of our commonwealth that, acting through her legislative and executive departments, the State of Pennsylvania was the first to take such action as will secure practical results, and do much and probably all that can be accomplished, to eradicate this great danger to our national life. It is to be safely assumed that the one who approved was also the one who inspired the act of March 16th, 1905, whereby our Chief Executive was authorized to appoint a commission to codify our present laws on the subject of divorce, and, with him, to act as delegates to a Congress of the states to devise a uniform statute

upon this question. In accordance with Governor Pennypacker's initiative and invitation, the governors of forty-two states appointed delegates to a Congress as unique in its assembling as it was important in its declared object of meeting. Excepting the Convention of 1787 which created our Federal Constitution—and where but five states were represented at one time—no official gathering has ever been held in the United States save, of course, our National Congress, at which there were representatives holding the credentials of the governors of the states, while to this Convention delegates were appointed by all the states except South Carolina (which having no divorce law, declined the invitation), Mississippi and Nevada. That the Congress should meet in Washington was universally acceptable, and public interest was aroused in anticipation of its organization, discussion and resolutions.

It is apparent that no little labor, as well as extensive correspondence, was involved in bringing this Congress together, as also in making the necessary arrangements for its meetings and accommodations, and in preparing for its work. The practical side of this question was handled by a Committee of Arrangements, consisting of the delegates from Pennsylvania, from the District of Columbia, and of the chairman of the Committee on Uniform Legislation of the American Bar Association, who was also one of the delegates, Mr. Eaton, of Rhode Island. It will not be immodest to state that the greater part of this labor fell upon the Pennsylvania delegates, of whom the distinguished secretary of the Pennsylvania Bar Association, William H. Staake, Esq., of Philadelphia, as chairman of this committee, was the most indefatigable. The success of the Congress and the smoothness with which it moved along were in a large measure due to his executive ability, capacity for management of details, and his never-failing tact and courtesy.

Preparatory to the meeting of the Congress, and in order that its work might be laid out with some system, as well as to conserve the time of its delegates, the representatives of this commonwealth, in pursuance of what they believed to be the duties imposed upon them by virtue of their appointment, and realizing that no other state had probably taken up this work with the same thoroughness, took upon themselves the formulation of all such matters as they felt would properly and intelligently present to the Congress, when it assembled, the various points upon which, after seven months of arduous labor, the commissioners from Pennsylvania believed uniformity of results might be obtained.

This preliminary work of the Pennsylvania delegation, so far as laid before the Congress, consisted of three matters:

First. A printed compilation of the laws of every state and territory upon the subject of divorce.

Second. A "Declaration of Principles," ethical and legal, underlying the problem of divorce, and, indirectly, the question of marriage, which, as all of the delegates present recognized, lies at the root of all the evil involved.

Third. An outline skeleton of a uniform divorce code, expressing in concrete form the abstract principles in the above mentioned declarations.

To these principles, covered under the general head of seventeen resolutions, reference will soon be made, it being sufficient to say now that not only were these suggestions courteously received by the Congress—and there were few others presented, except as additional or supplemental—but that they were practically adopted by the Congress.

It may be of interest at this point to make some reference to the Congress itself, and to the personnel of the delegates, and to give a short review of the proceeding. Organized on February 19th, 1906, in the spacious hall of the New Willard Hotel, in Washington, the delegates from forty-one states and the District of Columbia answered to the roll call, numbering, all told, over one hundred, and including the names of distinguished jurists, lawyers and clergymen from ail parts of the Union. Naturally, as the questions involved were primarily of a legal character, a large majority of the delegates were men learned in the law. Among these may be named the Governors of Pennsylvania and Delaware, the Lieutenant-Governor of Indiana, United States Senator Sutherland of Utah; Vice-Chancellor Emery and United States Judge Lanning of New Jersey; Prof. Gardner of Harvard University; Dean Huffcut of the Cornell Law School; Mr. Justice Jaggard of the Supreme Court of Minnesota; the Hon. John H. Stiness, lately Chief Justice of Rhode Island; and Amasa M. Eaton of the same state; John C. Richberg and the Hon. John P. McGoorty of Chicago; Hon. Seneca N. Taylor of St. Louis; F. H. Busbee of North Carolina; R. T. Barton and John G. Pollard of Virginia; Hon. Alfred Wolcott of Michigan; Talcott H. Russell of Connecticut; President H. K. Warren of Yankton University, South Dakota; and Dean Sterling of the University of South Dakota; Hon. Roscoe Pound, Dean of the Nebraska Law School; Ralph W. Breckinridge and John L. Webster of Omaha; Judge Dabney of California; Charles F. Libby of Maine; Judge Thorn-

ton and W. O. Hart of Louisiana; and Otto J. Kraemer of Oregon. Among the delegates other than those of the legal profession may be included Bishop Gailor of the Episcopal Diocese of Tennessee; Bishop Shanley of the Roman Catholic Church of North Dakota; the Rev. Dr. Minton of New Jersey, formerly Moderator of the General Assembly of the Presbyterian Church; the Rev. Dr. Alex. J. D. Haupt of the Lutheran Church of Minnesota; the Rev. Dr. Samuel W. Dike of Massachusetts; and the Rev. Ira Landreth of Tennessee. Upon motion of the delegates from Nebraska, seconded by the delegates from Rhode Island, the Honorable Samuel W. Pennypacker, Governor of Pennsylvania, very properly styled the father of the Congress, was unanimously chosen as its President. His inaugural address was the key note of the convention and set the pace for its work, while his genius as a presiding officer, as well as his courtesy and ability in handling the Congress, won for him unstinted praise.

The organization completed, the Congress, upon his invitation, called in a body upon the President of the United States, and at its next session received the delegates from the Inter-Church Conference, headed by their chairman, the venerable Bishop Doane of Albany, and including Bishop Wilson of the Methodist Episcopal Church South; the Rev. Dr. Roberts and Rev. Dr. Dickey of the Presbyterian Church; and John E. Parsons and Francis Lynde Stetson, leaders of the bar of New York.

The resolutions and the skeleton code prepared by the delegates from Pennsylvania were submitted to the Committee on Resolutions, of which, Walter George Smith, Esq. of Philadelphia, was chairman, and upon whom devolved a large portion of the labors on the floor of the Convention in bringing these resolutions before the Congress. It is but just to say that the results arrived at were in a large measure due to his unusual qualities, both of mind and character. For tact, graciousness of manner, breadth of view, surbordination of his own personal convictions in the interests of society, for earnestness of purpose, for absolute honesty and fairness, not only to the Congress but to his own conscience, and for his comprehensive grasp of all the questions involved, a stronger man could hardly have been found to lead the debates and discussions of the Congress.

It was agreed among the rules of order that the votes upon the resolutions presented should be by states. It was inspiring, as well as interesting, to listen to the call of the states, from Alabama to Wyoming, and to observe the chairman of each delegation arise and announce the vote of his respective common-

wealth. Such an assembly, as has already been said, has hitherto been unknown in the history of our country, and hence this Congress attracted much attention, as well for the importance of its labors as for the satisfactory results accomplished.

The Congress adopted eighteen basic resolutions, and by a very large majority of the states. These resolutions will be the foundation of a uniform code, of which more will be said hereafter, but for the present we will discuss the resolutions themselves.

The first resolution was as to federal legislation, and was unanimously adopted, as follows:

I. It is the sense of the Congress that no federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment,—a necessary prerequisite,—would be futile.

> The Congress recognized that under the Constitution of the United States the federal government has no jurisdiction of the questions of Marriage and Divorce, and was of opinion that in matters of such purely domestic concern it should have none, and that it would be practically impossible to secure an amendment to the Constitution in this regard for many reasons. In the first place, the question of States Rights as against a centralized form of government would be involved; secondly, in order to secure a constitutional amendment it would be necessary to secure the approval of two-thirds of both branches of Congress to the submission of such an amendment to the states, or else the application of the legislatures of two-thirds of the states therefore, and the subsequent ratification by the legislatures of three-fourths of the states; thirdly, because even if such an amendment were to be submitted to the legislatures of the various states, it would be rejected by them, either because conservative ones like South Carolina and New York would object to an increase of the number of causes for absolute divorce, or because others, which have adopted a liberal, if not lax policy in this regard, would object to restrictions that might be imposed by Congress.
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> It therefore being the sense of the Congress that the remedies must be sought through the legislatures of the various states, the following General Resolutions embodying the essential principles relating to the matter were almost unanimously adopted:

1. All suits for divorce should be brought and prosecuted only in the state where the plaintiff or defendant had a *bona fide* residence.

> The reasons controlling the action of the Congress in adopting this resolution were practically as follows: Marriage being a social status of the citizens of each state, and therefore properly of purely domestic concern, the remedy for offenses against that social status should also, as far as possible, be confined to the courts of the state in which the parties to the marriage contract had acquired and maintained their common matrimonial domicile, and that any proceedings for dissolution of the status of marriage must find their sanction in the legislation of that state. That no state should have the right to extend its jurisdiction over the marital status of citizens of another state; and that all attempts so to do would, as is apparent from an examination of the decisions not only of the higher courts of the various states, but of the United States Supreme Court, result in confusion both as to the marriage status of the parties themselves and as to the property rights of such parties and their heirs. Also that by confining the jurisdiction of the courts of each state in suits for divorce to its own citizens, or to those who have acquired citizenship by a *bona fide* residence for a prescribed term of years, the evils arising from migratory divorces would be in a measure abolished.

2. a. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

b. When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

> The evil of migratory divorce lies partly in the extreme to which the doctrine of the right of each state to legislate exclusively as to all of its domestic concerns has been carried, and the unwillingness on the part of such states to recognize the principle of inter-state comity as embodied in Article IV, Section 1, of the Constitu-

tion of the United States, which provides that "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state;" and partly to the fact that both the larger number of causes for absolute divorce prescribed by many of the states, the shorter term of residence required therein, and the loose administration of the existing laws, has in the past afforded unlimited opportunity for fraudulent and collusive divorces, and for divorces where jurisdiction of only one of the parties was obtained by the court of the state to which the applicant applied for relief. Therefore, the Congress felt that it should be presumed that each state would carefully protect the rights of its own citizens, and that no person of honest intentions should seek relief in any other court than that in which they had the right to bring suit by reason of their common domicile; and that each state, in proceedings for divorce, just as in other legal proceedings, should take cognizance of the legal status of the parties in the state where the marriage relation had existed.

3. a. Where jurisdiction for absolute divorce depends upon the residence of the plaintiff, not less than two years residence should be required on the part of the plaintiff who has changed his or her state domicile since the cause of divorce arose.

b. Where the jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years residence should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose.

There is, and can be, no constitutional or legal restriction placed upon the rights of every individual to acquire a residence and citizenship in any part of the United States for any purpose whatever. But just as the right of suffrage cannot be acquired in any state except after a prescribed term of residence and upon other conditions, so each state may prescribe the terms and conditions upon which it will permit former non-residents to invoke the jurisdiction of its courts to grant relief from the real or supposed hardships of a social status that, in its practical and moral relations, lies at the bottom not only of the welfare of the social condition of each state, but of the country at large. Therefore the Congress has suggested in the above resolution that no proceedings

in divorce can be commenced unless either the plaintiff or defendant who has changed his or her domicile since the cause of divorce arose has resided in the new state for at least two years

The foregoing three resolutions relate, as will be apparent, to the question of jurisdiction of the courts in divorce preceedings, and, in the judgment of all who considered the question, will go far to abolish the most serious evils of divorce.

4. An innocent and injured party, husband or wife, seeking a divorce, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist.

As is well known, the Roman Catholic Church recognizes no ground for absolute divorce for post-nuptial causes, but only a legal separation, or as it is called in England, and in this country, divorce *a mensa et thoro*.

Many in the Episcopal Church both clergy and laity, hold that the marriage tie is indissoluble for any cause, while the canon law of that Church denies the validity of divorce save for the cause of adultery, and such are the conscientious scruples of many members of other denominations.

South Carolina recognizes no cause whatever for divorce of any kind. New York and the District of Columbia recognize adultery alone as a cause for absolute divorce. While the principle of the individual right of contract between any two persons of opposite sexes to enter into the marriage relation has been carried, in theory, by many; to include also the right of terminating such relation at the will or pleasure of either of the parties, yet the best legal, philosophical and religious thought of all civilized nations recognizes the fact that a marriage relation once entered in becomes a social status or relation,—just as much as the relation of parent and child,—over which society, either through the Church or the State, has a right to assume control for its own protection. Since in this country the legal right to control the matter of divorce is denied to the Church, and that function rests solely with the State, it was felt, and unanimously agreed, that the State should recognize the scruples of the large minority

of the citizens of this country who are opposed to absolute divorce, notwithstanding the fact that many states, especially in the West, do not recognize divorces *a mensa*. The resolution as adopted simply leaves it optional whether the innocent and injurd party shall apply for an absolute divorce or a limited divorce, and the privilege is given to the husband as well as to the wife. One strong argument in favor of limited divorce is that it leaves the door open for a subsequent reconciliation.

5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation, and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired, but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited. The principles enumerated in this paragraph speak for themselves, and need not be elaborated.

6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa*, seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of cases reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted no change is called for.

a. *Causes for Annulment of the Marriage Contract*:
   1. Impotency.
   2. Consanguinity and affinity, properly limited.
   3. Existing marriage.
   4. Fraud, force or coercion.
   5. Insanity, unknown to the other party.

b. *Causes for Divorce a. v. m.*:
   1. Adultery.
   2. Bigamy.
   3. Conviction of crime in certain classes of cases.
   4. Intolerable cruelty.
   5. Wilful desertion for two years.
   6. Habitual drunkenness.

c. *Causes for Legal Separation, or Divorce a. m.*:

1. Adultery
2. Intolerable cruelty.
3. Wilful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness

This resolution distinguishes clearly between causes for annulment of the marriage contract, which in all cases are ante-nuptial, and causes of divorce *a vinculo* or *a mensa,* which in all cases are post-nuptial.

No attempt was made by the Congress in adopting this resolution to dictate to any state what causes of annulment or divorce it should permit; it being recognized that each community has the right to legislate for its own citizens in all matters of purely domestic concern. The resolution, therefore, simply expresses a statement of fact, namely, that the causes specified seem to conform to the general class of grounds for divorce recognized by the various states of the Union, and they are expressed in general terms. As stated above, two or three of the states recognize no other cause than adultery as a ground for absolute divorce. Other states permit many more. Some states do not recognize divorce *a mensa.* Many states, including Pennsylvania, do not recognize habitual drunkenness among the causes for either kind of divorce, possibly because dipsomania is regarded more as a curable disease, if wisely and properly treated both by the family and the medical profession, than as a positive breach of the marriage contract; possibly, because it has been felt that, unless accompanied by such conduct as would rise to the plane of intolerable cruelty, it should not be made a substantive cause of divorce. Many states do not include post-nuptial insanity as a cause of divorce although in Pennsylvania, at the last session of its legislature, it was, through probable misconception, added to the list of the causes already existing.

The enumeration of the various causes in this resolution will in nowise compel the state of New York, or the District of Columbia, for instance, to increase the number of its causes for absolute divorce, nor will it forbid other states to add such causes as the peculiar conditions of society within the limits of such states may seem to require. But it was the strongly expressed hope, and almost con-

viction, of the delegates that the ultimate result of the present movement, which found voice in the Congress, will be towards a gradual restriction, rather than an enlargement of the causes of divorce.

7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the states of the Union, or in a federal court; or in some one of the countries or courts subject to the jurisdiction of the United States or in some foreign country, granting a trial by jury, followed by an equally long term of imprisonment.

Conviction for crime is very generally recognized throughout a majority of the states as a substantive cause for divorce. The language of the codes of the various states differs very greatly in this regard, some requiring imprisonment for life, others imprisonment in a penitentiary, others conviction of an infamous crime, and some few imprisonment for one year only. The resolution as finally adopted seemed quite conservative in its terms, and was further framed so as to require that the offending criminal should have the benefit of a fair jury trial before the additional penalty of a decree in divorce should be added to the sentence for his crime.

8. A decree should not be granted *a. v. m.* for insanity, arising after marriage.

As stated above, post-nuptial insanity has been recognized in some states as a cause for divorce *a vinculo;* and Pennsylvania, in 1905, added itself to the list; but the Congress, by a vote of thirty states to one, placed itself squarely upon record as opposed to this as a proper ground for divorce. Lawyers, clergymen, physicians and laymen all united in expressing their abhorrence of permitting a mental disease depending on no voluntary, wilful breach of the marriage contract, arising often, in the case of the wife, as a result of the marriage itself, to be placed upon the same footing as adultery, cruelty, crime or desertion. The law as well as the Church, in theory, recognizes the marriage relation as indissoluble, and that it can be severed only by reason of the fact that some cases of positive wrong-doing by one of the parties utterly defeat the purposes and possibility of continuance of the marriage relation. If insanity

should be recognized as a cause of divorce it would open the door to divorce for all sorts of diseases, where the duty of sustaining the marital relation has become burdensome, at the will of either party.

9. In those states where desertion is a cause for divorce, it should never be recognized as a cause unless it is willful, and is persisted in for a period of at least two years.

Desertion is an economic rather than a moral offense against the marriage relation, and while a number of the states, where the population is migratory and the conditions are unsettled, have recognized one year's desertion as sufficient ground for divorce, yet the Congress felt that progress rather than retrogression should be the rule laid down, and accordingly recommended that the period of desertion should cover at least two years.

The foregoing five resolutions relate plainly to causes for divorce, and cover the third general branch of the questions before the Congress.

The following nine resolution relate more particularly to methods of procedure.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity, by notice brought home to him, to have his day in court, when his residence is known or can be ascertained.

A widely recognized stigma upon the courts of this country consists in the fact that either through carelessness, or sympathy with plaintiffs invoking the aid of their jurisdiction, or through lax interpretation and administration of existing laws, they will entertain divorce cases and grant decrees in divorce without having acquired jurisdiction of the person of both parties, or even of the subject matter; and it was felt by the Congress that a valuable check would be placed upon such widely prevailing laxness, if each state should require jurisdiction of the person of the defendant to be secured by other means than publication in a local paper which would never be apt to come to the eyes of the defendant. A further important legal question is involved in this resolution, one that has been before the courts of the various states, and of the United States Supreme Court, many times. namely, that no state can exercise extra-territorial jurisdiction; and that unless jurisdiction of the person of the defendant be legally acquired by service of process within the confines of the state

where the proceedings are begun, no decree in divorce will be valid beyond the limits of that state. Hence, it was deemed most desirable, not only for the protection of the parties themselves, but of their property rights, to declare in positive terms that no person should have a decree entered against him without having had his day in court.

11. Any one named as co-respondent should in all cases be given an opportunity to intervene.

In a few of the states, as in England, a party charged as co-respondent must be named in the libel or complaint, and, if falsely charged, has an opportunity to defend and vindicate his or her good name. It seemed to the Congress that so simple a personal right should, in the interests of justice, be given in all such cases.

12. Hearings and trials should always be before the court, and not before any delegated representative of it, and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court to actively defend the case.

This resolution provoked much discussion and some opposition, especially on the part of states where divorce proceedings are heard and tried only before the higher courts, whose duties are so numerous and exacting as to render it almost impossible for them to take the voluminous testimony of witnesses and which courts, therefore, have adopted a custom of referring such cases to standing or special masters in divorce. The formation of the marriage contract is almost always attended with more or less publicity, and it was felt that if a similar publicity were attached to the termination of the marriage relation, and that if what are known as secret divorces could in any measurable degree be abolished, the number of applications would very decidedly diminish, and the pernicious idea of "easy divorce" would gradually become eliminated from the social consciousness of every community; and after full discussion the vote upon this resolution was unanimous in its favor. It may not be out of place to add that neither the adoption of this nor of any other resolution by the Congress is binding upon any particular state; and if a more careful consideration of divorce cases can be attained in states where the higher courts alone have jurisdiction of such cases, by the appointment of reputable mas-

ters or referees to take the testimony in the first instance, such state may adopt that method of procedure.

13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent.

In ordinary civil cases admissions of either party by the pleadings are sufficient, by way of estoppel, to warrant a decree upon the faith of such admissions. But in cases where the social status, rather than the civil status, of the parties is involved (the state as the representative of society, being in effect a third party to the suit), the right to a dissolution of the marriage relation should not be affirmed unless the causes alleged in support thereof be made out by clear and positive proof. And to this end the last provision of Resolution Number 12, that in any case the court may appoint a disinterested attorney to actively defend the cause, was added.

14. A decree dissolving the marriage tie so completely as to permit the remarriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

It is well known that a large proportion of divorces are sought by one or both of the parties in order to a remarriage. The religious sentiment of the country, which has found expression during the past few years in church conventions and the press, both religious and secular, is strongly opposed to divorce for the purpose of "trying the experiment again." Many states have formulated this conviction in statutory form, and either require that the decree shall be in the first instance a decree *nisi,* or forbid the parties to divorce proceedings from remarriage within a prescribed time after granting of the decree. Each method has its merits, and the Congress, by Resolution Number 14, did not attempt to decide which of the two methods was preferable. The end to be attained is some form of prohibition upon speedy remarriage; and as this resolution was adopted unanimously, it is to be hoped that every state, in adopting whatever form of code may be decided upon, will incorporate such a provision therein.

15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous

marriages, or the impossibility of access by the husband has been proved.

Much confusion exists in the legal as well as the lay mind as to the status of children of illegal marriages. Some marriages are void *ab initio;* others merely voidable until the decree of divorce has been entered. At common law the children of void marriages and the children of voidable marriages, after decree entered, were bastardized. Such a hardship upon innocent children is repellent to the modern moral consciousness, and many of the states have already adopted provisions legalizing the issue of all marriages, excepting where by no possibility could such issue be properly treated as legitimate. This exception was covered by this resolution in the reference to the offspring of bigamous marriages, or where the impossibility of access by the husband has been proved.

16. Each state should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: "If an inhabitant of this commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."

A recent decision of the United States Supreme Court, in *Andrews v. Andrews,* 188 U. S., 14, established the principle that each state has the right to provide by statute that its own citizens shall not be allowed to procure a divorce in another state, either for a cause which occurred in another state, of their domicile, or for a cause not authorized by such state. This being the latest expression of the principle involved, the Congress embodied it in the foregoing resolution.

17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code.

This resolution needs no elucidation. Fraud always avoids any judicial decree; but as it might never be brought to the attention of the court, it was thought advisable to urge that the state be permitted, through its criminal code, to take cognizance of such cases.

While this review of the resolutions adopted by the Congress is but cursory and perhaps confusing, enough will be gathered to indictate that when they are embodied in the statute laws of the states a long step forward will have been taken toward remedying the

present divorce evil, not so much by restricting the causes as in the line of improvement on the question of jurisdiction and procedure.

The Congress referred these resolutions to a committee of seventeen, to whom were added the officers of the Convention, with instructions to report a uniform code at another session. This larger committee has named a sub-committee, consisting of the delegates from Pennsylvania and Vice-Chancellor Emery of New Jersey, to draft this code. This work is now in hand and will be ready for the general committee during the early autumn.

The delegates from this commonwealth are also the Commissioners appointed under the provisions of the act of March 16th, 1905, to examine and codify the laws of this state relating to the subject of divorce, and to report the result of their labors to the governor for submission to the legislature. This work has been in their hands for more than seven months, and a large amount of it has already been accomplished, involving many days of study and consultation, and the almost continuous labors of the special secretary of the Commission, William D. Crocker, Esq., of the Lycoming County Bar, whose studies in this field have been most exhaustive, and his assistance of great value to the Commission. We have also devoted much attention to the preparation of an improved code of divorce laws for Pennsylvania, work which will be of the greatest benefit in the preparation of the proposed uniform code for all the states. It is sincerely hoped that the next session of the various state legislatures will have before them the proposed code, and that before their adjournment it will have been adopted and approved by at least the larger number. Pennsylvania has taken the lead in inaugurating this important movement, and it may well be assumed that she will not be the last to adopt this important reform.

C. La Rue Munson.

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